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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 821.

JAX ICE & COLD STORAGE COMPANY, a corporation, trading as Jax Brewing Company, *Petitioner*,

v.

CONWAY P. COE, UNITED STATES COMMISSIONER OF PATENTS, and JACKSON BREWING COMPANY, a corporation, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

REPLY BRIEF OF PETITIONER

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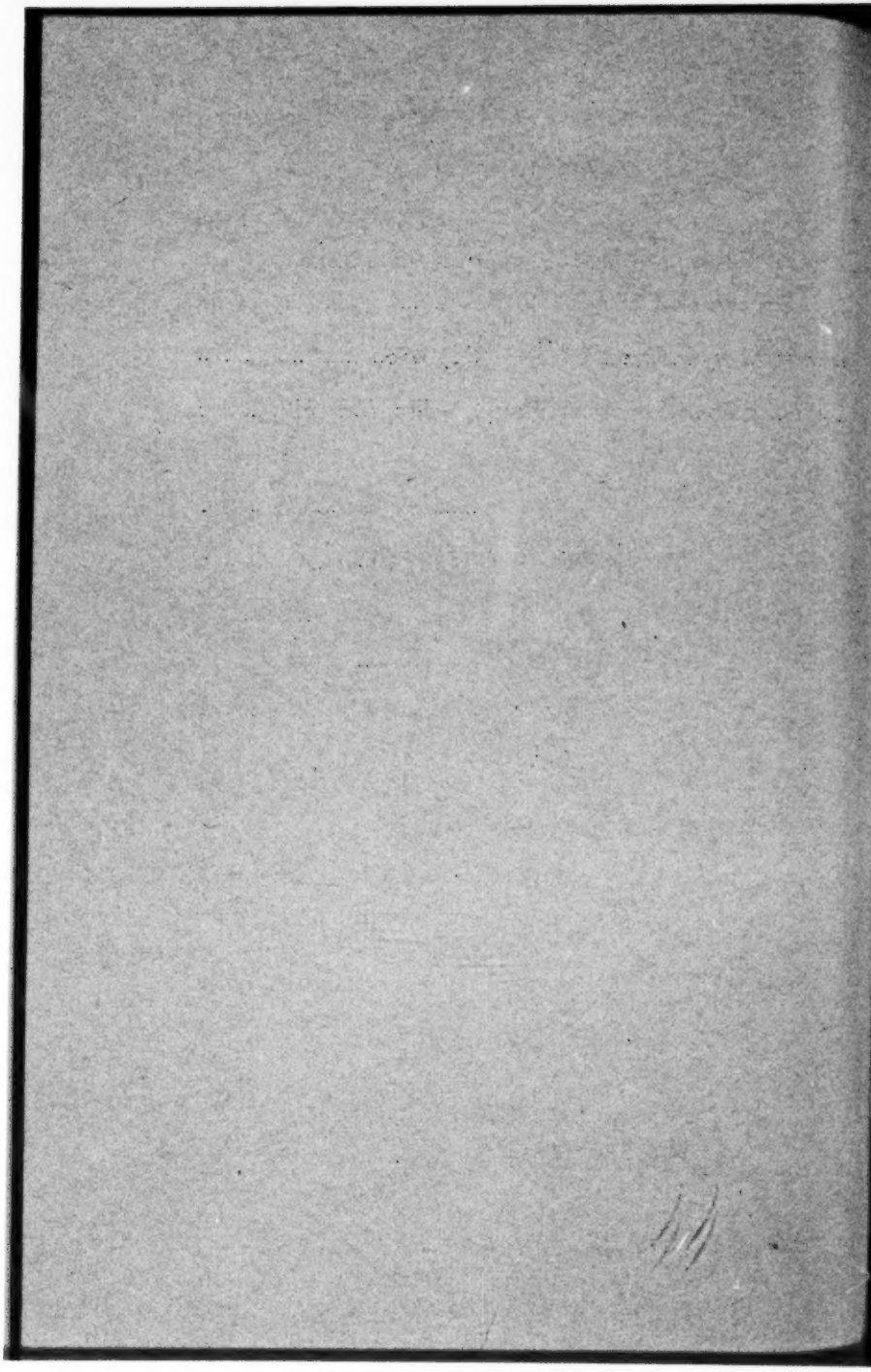

CASES CITED

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REPLY BRIEF OF PETITIONER

In answering the brief of Respondent, Jackson Brewing Company, we call this Honorable Court's attention, first, to the fact that Section 4915, *Revised Statutes*, provides for a *bill in equity* in the District Courts of the United States, and necessarily and obviously contemplates a *case or controversy*. There must, therefore. be adverse parties.

The statute specifically provides that where there is no *opposing party* the Commissioner of Patents shall be a necessary party. We submit, therefore, that the statute itself ex-

pressly recognizes that the Commissioner of Patents is an adverse party else he could not be made a necessary party in the instance recited.

This court in the case of *U. S. ex rel. The Baldwin Company v. Robertson et al.*, 265 U. S. 168, held that an aggrieved party in a trade-mark matter in the Patent Office had a right, under Section 4915, *Revised Statutes*, to bring a bill in equity for the enforcement of his contended rights, and this holding was made in a proceeding brought in the District Court for the District of Columbia, in which the successful party in the Patent Office proceeding (a non-resident of the District of Columbia) and the Commissioner of Patents were parties. An injunction against the Commissioner was held in this case to be proper, and we respectfully submit that a basis for the decision of this court in that case was the adversity of the Commissioner of Patents and his status as a *proper* if not under the circumstances a *necessary* party.

Section 4915, *Revised Statutes*, gives the right to a bill in equity only to an aggrieved *applicant for patent*, and other parties in patent proceedings have no recourse to the statute. This court held in the *Baldwin* case that the same remedy provided an aggrieved applicant for patent was, by Section 9 of the *Trade-Mark Act* of 1905, provided each of the three or four different applicants in trade-mark matters, including an applicant for cancellation of a trade-mark registration. With this in mind, the cases of *Arbetter Felling Machine Co. v. Lewis Blind Stitch Machine Co.*, 230 Fed. 992; *Armstrong v. DeForest*, 37 Fed. (2d) 438, and *Hazeltine Corporation v. White*, 68 Fed. (2d) 715, and other decisions in actions under Section 4915 involving patent matters, are better understood.

The Respondent expressly recognizes that Section 4915,

Revised Statutes, contemplates a case or controversy, and it refers expressly to the decision of the Circuit Court of Appeals for the Sixth Circuit in the case of *Cleveland Trust Company v. Berry*, 99 Fed. (2) 517, in which that court expressly held that a case or controversy was contemplated by the statute, and that the Commissioner of Patents if not a necessary party was at least a proper party. We respectfully submit that this express ruling of the Sixth Circuit Court of Appeals necessarily recognizes the adversity of the Commissioner of Patents and is in direct conflict with the decision of the Court of Appeals for the District of Columbia in this case and in the case of *Coe v. Hobart Manufacturing Company*, 102 Fed. (2) 270, and in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Drackett v. Chamberlain*, 81 Fed. (2d) 866, wherein that court held that the Commissioner of Patents was not only a proper party, but a *necessary* party in an action under Section 4915, *Revised Statutes*.

It is well recognized by that portion of the bar specializing in the law of patents and trade-marks, that widespread confusion, jurisdictionally and otherwise, exists with respect to causes of action and the rights of Patent Office applicants and parties under Section 4915, *Revised Statutes*, and we state, without equivocation, that the bar itself would, if given an opportunity, plead earnestly with petitioner for an enlightening decision of this Honorable Court.

Respectfully submitted,

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